IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE, TENNESSEE

WORD MUSIC, LLC., a Tennessee Limited Liability company, DAYSPRING MUSIC, LLC, a Tennessee Limited Liability Company, WORDSPRING MUSIC, LLC., a Tennessee Limited Liability company, UNICHAPPELL MUSIC, INC., a Delaware corporation, CHAPPELL & CO., INC., a Delaware corporation, COTILLION MUSIC, INC., a Delaware Corporation, RIGHTSONG MUSIC, INC., a Delaware Corporation, WALDEN MUSIC, INC., a New York Corporation, WARNER/TAMERLANE PUBLISHING CORP., a California corporation, and WB MUSIC CORP., a California corporation,

Plaintiff,

vs.-

PRIDDIS MUSIC, INC., a Nevada corporation, RICHARD L. PRIDDIS, individually, PROSOUND KARAOKE LTD., a United Kingdom corporation, MEDIOSTREAM, INC., a California corporation, d/b/a "K SUPERSTAR," D.J. MILLER MUSIC DISTRIBUTORS, INC., a Colorado corporation, d/b/a "PROSING," and DALE S. MILLER, Individually

Defendants.

Case No. 3:07-cv-502

JURY DEMAND

Judge Haynes

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

I.

INTRODUCTION

Plaintiffs, WORD MUSIC, LLC., *et al.,* ("Plaintiffs") have moved for a preliminary injunction asking this Court to enjoin the Defendants from manufacturing, releasing, distributing, advertising, selling or otherwise exploiting any products utilizing the music copyrights owned or

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administered by Plaintiffs without first obtaining the necessary licenses. As set forth in greater detail below, Plaintiffs meet each of the criteria necessary to obtain entry of a preliminary injunction. The factual premises are derived from the pleadings and various Declarations and exhibits previously or concurrently filed in this cause, including the Declaration of Kelly L. Isenberg, Declaration of Dorothy D. Gibby (Doc. 25), Supplemental Declaration of Dorothy D. Gibby, Declaration of Paul Harrison Stacey (Doc. 24) and Supplemental Declaration of Paul Harrison Stacey.

II.

FACTUAL BACKGROUND

Plaintiffs are music publishers which own, co-own and/or administer the copyrights of musical compositions recorded by many of the most popular recording artists of all time. The Nashville offices of the Tennessee Plaintiffs are located at 25 Music Square East, Nashville, Tennessee 37203 and the California offices for the rest of the Plaintiffs are at 10585 Santa Monica Blvd., Los Angeles, California, 90025. (Complaint, ¶¶3-12). Defendants PRIDDIS MUSIC, INC., PROSOUND KARAOKE LTD. And RICHARD L. PRIDDIS, ("PRIDDIS Defendants), are in the business of manufacturing, distributing, advertisng and selling karaoke recordings. (Complaint, ¶¶13-16). Defendant, MEDIOSTREAM, INC., ("MEDIOSTREAM") is a California corporation, d/b/a "K SUPERSTAR," which is an interactive internet website. Utilizing the unlicensed recordings provided by the PRIDDIS Defendants, MEDIOSTREAM has operated the "K SUPERSTAR interactive internet website as both a subscription service for visitors/participants to purchase the use of music, make personal recordings and share their recordings with other subscribers. (Complaint, ¶17) MEDIOSTREAM has also used the "K SUPERSTAR" website to advertise, promote, and facilitate the sale of unlicensed karaoke recordings of the Plaintiffs' music copyrights which have been manufactured by the PRIDDIS Defendants. (Complaint, ¶¶15-17); Stacey Supp. Decl., ¶5)

Defendant DJ MILLER MUSIC DISTRIBUTORS, INC., is a karaoke music and hardware distributor, operating under the d/b/a "PROSING." "PROSING" is interactive internet website which distributes, advertises, promotes and sells various karaoke recordings and hardware including, but not limited to, many of the unlicensed karaoke recordings manufactured by the PRIDDIS Defendants and PROSOUND. Defendant DALE S. MILLER is, on information and belief, the founder and President of DJ MILLER MUSIC DISTRIBUTORS, INC. (hereinafter, collectively "MILLER Defendants") (Complaint, ¶¶16, 18-19)

Karaoke recordings are marketed and sold for the intended purpose of allowing customers to sing along to popular music. (Complaint, ¶¶21-22). Karaoke recordings, including those manufactured and distributed by PRIDDIS Defendants, are available through various websites and mail order. (Complaint, ¶¶22-23; Stacey Supp. Decl., ¶19). The Defendants' karaoke recordings are in a typical configuration; they include two recordings of a song: one performance of the words and music of a popular recording (performed by someone other than the recording artist or group that popularized the song), synchronized with a video display of the lyrics; and a second, separate recording of the performance of the music with no accompanying lyrical performance, synchronized with a video display of the lyrics (either with a visual image or alone on a screen) and, in some cases, another video image(s) synchronized to the sound recording. (Complaint, ¶¶22)

Upon information and belief, since at least as early as 2003, PRIDDIS Defendants have released numerous karaoke recordings containing at least 345 copyrights owned/administered by Plaintiffs (Complaint, ¶¶29, Exhibit "A" to Complaint). The other defendants have advertised, distributed, sold and/or otherwise exploited the unauthorized recordings made by the PRIDDIS Defendants. (Complaint, ¶¶23, 27-31, Exhibit "A" to Complaint; (Isenberg Decl., ¶7) Plaintiffs have not authorized any of the defendants to exploit Plaintiffs' copyrighted musical compositions in any way. (Isenberg Decl., ¶¶4-5)

On or about January 26, 2007, counsel for Plaintiffs sent a cease and desist letter to each of the Defendants, and/or their attorneys/registered agents, citing them for copyright infringement and related matters for hundreds of music copyrights owned and/or administered in whole or in part by Plaintiffs. (Stacey Supp. Declaration, ¶ 5, Exhibit "B" thereto). Thereafter, the various Defendants, MEDIOSTREAM and the PRIDDIS Defendants in particular, communicated with Plaintiffs' counsel to indicate that they had ceased all infringing activities. (Stacey Supplemental Declaration, ¶ 6, Exhibit "C" thereto).

While numerous discussions ensued between MEDIOSTREAM, the MILLER Defendants and Plaintiffs' counsel, the PRIDDIS Defendants, (apart from two brief items of faxed correspondence which are attached to the Stacey Supp. Decl. as Exhibit "C"), were largely unresponsive. In the process of investigating the representations made by the PRIDDIS Defendants in those two brief items of correspondence, it became clear that the facts demonstrated that the PRIDDIS Defendants were not being truthful when they represented that they had "…exited the Karaoke business;" indeed, they were continuing to infringe Plaintiffs' copyrights unabated. (Stacey Supp. Decl., ¶¶ 7, 9; Gibby Decl., ¶¶3-4) PRIDDIS Defendants' infringing recordings of Plaintiffs' copyrights were purchased via an interactive internet website from Nashville, Tennessee, on or about March 14, 2007. (Gibby Declaration, ¶ 3, Exhibit "A" thereto, Doc 25). While the PROSING Defendants orally communicated that steps were being taken to remove all infringing materials from their website, Plaintiffs' counsel was able to access the interactive internet karaoke website and see infringing materials being advertised for sale. Similar purchases of Defendant PROSOUND's infringing recordings of Plaintiffs' music copyrights were then made by Ms. Gibby, through Defendant PROSING's interactive internet website, from Nashville on March 20, 2007. (Gibbey Declaration, ¶ 4, Exhibit "B" thereto, Doc. 25). Notwithstanding the filing of suit and the repeated oral assurances from the defendants and/or their attorneys that all infringing activities had ceased, Defendants continue to sell infringing recordings of Plaintiffs' copyrights to this day. (Gibby Supp. Decl., ¶¶ 2-4, Exhibits "A" and "B" thereto; Stacey Supp. Decl., ¶10).

It is indisputable that PRIDDIS Defendants and PROSING have sold products directly to Tennessee residents. (Gibby Decl., ¶¶3-4, Exhibits "A" and "B" thereto, Doc. 25). Some of those products contained musical compositions at issue in this lawsuit and were purchased via the PRIDDIS interactive website *after* the cease and desist demand was served (Gibby Decl. ¶¶2-4). Notwithstanding repeated demands to cease and desist their infringing activities, both the PRIDDIS and PROSOUND brands of Karaoke recordings continue to be marketed via the Defendants' interactive websites. (Supp. Gibby Decl., ¶¶ 2-3). PRIDDIS karaoke discs are also available for purchase by Tennessee residents via *at least* 2 other internet retail websites including "Acekaraoke.com" and "Karaokewarehouse.com". (Stacey Supp. Decl. ¶10, Exhibit "D" thereto)

III.

ARGUMENT

The issuance of a preliminary injunction lies within the discretion of the district court, and will not be overturned unless the district court relied upon clearly erroneous findings of fact improperly applied the law, or applied an erroneous legal standard. Mascio v. Public Employees Retirement System of Ohio, 160 F.3d 310 (6th Cir. 1998).

The underlying purpose of such a preliminary injunction is to preserve the status quo and prevent irreparable harm. See e.g., Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No 70 of Alameda County, 415 U.S. 423, 94 Sect. 1113, 39 L.Ed.2d 435 (1974); The Proctor & Gamble Co. v. Banker Trust Co., 78 F.3d 219, 226 (6th Cir. 1995) (Purpose of a Rule 65 injunction is to preserve the status quo so that a reasoned resolution of a dispute may be had).

In order to be entitled to injunctive relief, a plaintiff must demonstrate the following:

(1) irreparable injury;
(2) the harm threatened to the Plaintiff outweighs whatever damage the proposed injunction may cause to Defendants;
(3) the injunction would not be adverse to the public interest; and
(4) that Plaintiff has substantial likelihood that it will eventually prevail on the merits.

See Rock and Roll Hall of Fame and Museum, Inc. v. Gentile Prod., 134 F.3d 749, 753 (6th Cir. 1989).

The same criteria apply in the context of Plaintiffs' efforts to protect an intangible property right through injunctive relief: Tree Publishing Co. Inc. v. Warner Bros. Records, 785 F.Supp. 1272, 1274 (M.D. Tenn. 1991) These four factors are elements to be balanced and not prerequisites that must be met. Id. at 1274 (citing In re: Delorean Motor Co. v. Delorean, 755 F.2d 1223 (6th Cir. 1985)).

Plaintiffs request a preliminary injunction enjoining Defendants from manufacturing, distributing, releasing or otherwise exploiting any karaoke recording containing a musical composition or compositions owned or administered by Plaintiffs without first obtaining a license authorizing the use. In this case, each of the court factors weighs in favor of this Court entering a preliminary injunction:

A. Plaintiffs' Irreparable Injury.

In a copyright infringement action, Plaintiffs establish a rebuttable presumption of irreparable harm by showing that their valid copyrights have been infringed. Forry, inc. v. Neuondorfer, Inc., 837 F.2d 259 (6th Cir. 1988) (citing Apple Computer, Inc. v. Formula Int'l., Inc. 725 F.2d 521, 525-26 (9th Cir. 1984)). In this case, Plaintiffs own or administer the three hundred forty-five (345) musical compositions alleged to have been infringed. By infringing Plaintiffs' rights through the release of infringing karaoke recordings, the Defendants are presumed to be causing irreparable injury to Plaintiffs. The sheer volume of infringing recordings Defendants have manufactured for which Defendants have paid no royalties whatsoever also reflects a finding of irreparable harm of Defendants' infringing conduct is not enjoined. See Wynn Oil Co. v. American Way Service Corporation, 943 F.2d 595, 608 (6th Cir. 1991) ("The irreparable injury flows both from the potential difficulty of proof of plaintiff's damages and also from the impairment of intangible values…'") (quoting Koppers Co., Inc. v. Krupp-Koppers GmbH, 517 F.Supp. 836, 849 (W.D.Pa..1981)); Foundry Services v. Beneflux Corp. 206 F.2d 214, 216 (2d Cir. 1953) ("…and I cannot see how the plaintiff will ever be able to prove what sales the Defendants' competition will make it lose, to say nothing of the indirect, though at times far-reaching , effects upon its goodwill…") (concurring Hand, J.).

B. The Threatened Injury to Plaintiffs Outweighs Any Injury to Defendants

Defendants have no right to manufacture and distribute karaoke recordings containing Plaintiffs' owned or controlled compositions. Defendants can suffer no harm from being enjoined from exploiting Plaintiffs' intellectual property. In addition, in the context of intangible property rights, "courts generally ignore the harm to others consideration because an infringer could set up his infringement with substantial investment and thereby claim harm by the injunctive relief." Tree Publishing Co., 785 F.Supp. at 1277 (citing Apple Computer, Inc. v. Franklin Computer Corp., 714 F.2d 1240, 1254 (3rd Cir. 1983)).

Defendants may argue that the injunction barring the release of future infringing karaoke recordings is not necessary, since Defendants have an ongoing obligation under the law not to commit copyright infringement. An injunction is appropriate, however, to bar future violations of law when the injunction provides the restrained party with fair notice of what conduct will risk contempt, Louis W. Epstein Family Partnership v. Kmart Corporation, 13 F.3d 762, 771 (3rd Cir. 1994), and when the restrained party presents a likelihood of future violations. See United States v. Franchi, 756 F. Supp. 889, 893 (W. D.Pa 1991) ("once a violation has been demonstrated, the moving party need only show that there is a reasonable likelihood of future violations in order to obtain relief"). Defendants' past practices of chronic and repeated copyright infringement make future infringement likely absent injunctive relief. Defendants' false and fraudulent statements that they have ceased infringing activities demonstrates a persistent willfulness to infringe and that additional pressure from the Court is needed to coerce the Defendants into lawful respect for Plaintiffs' intellectual property rights. Moreover, because the requested injunction merely adheres the force of law to Defendants' existing obligation to refrain from infringing Plaintiffs' copyrights, the harm to Defendants does not exist.

C. The Public Interest Would be Served by Entering a Preliminary Injunction.

The public interest is served by the entry of a preliminary injunction because the public will be saved from further infringing conduct by the Defendants. Because a primary purpose of copyright law is to protect the rights of owners of intellectual property, the issuance of the injunction will benefit the public by vindicating the rights of the rightful owners of the intellectual property at issue. Tree Publishing Co., 785 F. Supp. at 1276-77 ("It is virtually axiomatic that the public interest can only be served by upholding copyright protections").

Moreover, an injunction will aid in protecting the legitimacy of the market for karaoke products. Karaoke manufacturers that week the appropriate licenses to exploit intellectual property cannot fairly compete with unscrupulous manufactures that fail or refuse to pay appropriate licensing fees.

D. Plaintiffs Established a Substantial Likelihood of Success On The Merits.

At this stage of the litigation, Plaintiffs need only present a prima-facie case showing their entitlement to the relief sought. See White Consolidated Industries, Inc. v. Whirlpool Corp., 784 F.2d 1224, 1225 (6th Cir. 1986) (district court issued injunctive relief because of Defendants' inability to overcome Plaintiffs prima facie case). Further, a court shall not be precluded from issuing a preliminary injunction "if the movant has, at a minimum, shown serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to Defendants if the injunction is issued.' "Six Clinics Holding Corp., II v. CAFCOMP Systems, Inc., 119 F.3d 393, 400 (6th Cir. 1997) (quoting Gaston Drugs, Inc. v. Metropolitan Life Ins. Co., 823 F.2d 984, 988 n. 2 (6th Cir. 1987).

Plaintiffs can meet this test. A Plaintiff in a copyright infringement action must establish two elements: ownership of a valid copyright and infringement. Robert R. Jones Associates, Inc. v. Nino Holmes, 858 F.2d, 274, 276 (6th Cir. 1988). In copyright infringement actions, "the certificate of registration…shall constitute prima-facie evidence of the validity of the copyright and of the facts stated in the certificate." 17 U.S.C. §410(c). Plaintiffs have attached 345 certificates of registration and/or song split sheets to the Declaration of Kelly L. Isenberg demonstrating their ownership/administration interests in the Subject Works; therefore, Plaintiffs have met the prima facie element of ownership.

Plaintiffs have also met the prima facie element of infringement. The owner of a musical composition copyright holds the exclusive right to control the manufacture and distribution of performances of the copyrighted material and the reproduction and distribution of the lyrics. 17 U.S.C. §106. In this case, those rights have not been licensed to Defendants to exploit. Defendants' manufacture, distribution, advertising, "sampling," sale and "file sharing" of karaoke recordings containing performances of Plaintiffs' musical compositions and reproductions of the lyrics (both in print and as visual graphics) infringes those rights.

Defendants' infringement is willful in the extreme. Defendants have ignored requests to cease and desist. Defendants ignored demands for payment. Defendants falsely stated that they had ceased their infringing activities when, in fact, they continue to manufacture, distribute, advertise and sell infringing recordings of the Subject Works to this day. (Gibby Decl.,¶¶2-4, Doc. 25; Gibby Supp. Decl., ¶¶3-4, Exhibits "A and "B" thereto; Stacey Supp. Decl., ¶10, Exhibit "D" thereto) Plaintiffs have established that they are likely to succeed on the merits on their claims of copyright infringement.

IV.

CONCLUSION

This Court should enter a preliminary injunction prohibiting Defendants from manufacturing, distributing, advertising, selling or otherwise exploiting any karaoke recordings containing compositions owned or administered by Plaintiffs without first obtaining the necessary licenses. Plaintiffs have clearly shown irreparable injury, a balance of the equities in their favor, that the public will be better served by prohibiting willful infringement of clearly-recognized rights and a substantial likelihood of success on the merits.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

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this the 2nd day of July, 2007.

s/ Timothy L. Warnock